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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/534,449

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Tjitze Meter

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EXAMINER

CHAUDHRY, SAEED T

ART UNIT

PAPER NUMBER

1792

MAIL DATE

DELIVERY MODE

02/25/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<i>Office Action Summary</i>	Application No.	Applicant(s)	
	10/534,449	METER, TJITZE	
	Examiner	Art Unit	
	Saeed T. Chaudhry	1792	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 18 November 2008.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 12, 13 and 15-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 22 is/are allowed.
- 6) ☒ Claim(s) 12 and 17-21 is/are rejected.
- 7) ☒ Claim(s) 13, 15 and 16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/06</u>  | 6) <input type="checkbox"/> Other: _____                          |

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## DETAILED ACTION

Applicant's amendments and remarks filed November 18, 2008 have been acknowledged by the examiner and entered. Claims 1-11 and 14 have been canceled and claims 12-13, 15-22 are pending in this application for consideration. The references filed in 1449 with language different than English has been considered in extent of the explanation given by the applicant's remarks filed November 18, 2008.

### The Abstract

Objected to the abstract has been withdrawn in view of the remarks filed November 18, 2008.

### Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 12 is rejected under 35 U.S.C. 102(b) as being anticipated by Grossman.

Grossman (1,524,129) discloses a method and apparatus for regulating temperature of an incubator. To heat the incubator a heater consisting of a number of coils of wire are provided. The temperature in the incubator rises above a selected point the expanding casing 15 engages the rode 40, closing the circuit through the relay 24 (see claims).

Grossman particularly does not disclose a step of cleaning an incubator. Since Grossman discloses to regulate the temperature of the incubator. Therefore, Grossman inherently clean the

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incubator while regulating the temperature of the incubator. The claimed process does not restricted to a specific temperature which is more than the temperature of incubation, since the cleaning is done during the incubation process, which still read on the Grossman process as claimed herein.

Claim 12 is rejected under 35 U.S.C. 102(b) as being anticipated by Oakes.

Oakes (1,460,349) disclose a method and apparatus for regulating temperature of an incubator. An electric heating coil arranged in an incubator, a controlling switch for the coil and a thermostat for operating a plunger for opening and closing a switch for controlling the temperature of the interior of the incubator (see claims).

Oakes particularly does not disclose a step of cleaning an incubator. Since Grossman discloses to regulate the temperature of the incubator. Therefore, Oakes inherently clean the incubator while regulating the temperature of the incubator. The claimed process does not restricted to a specific temperature which is more than the temperature of incubation, since the cleaning is done during the incubation process, which still read on the Oakes process as claimed herein.

#### Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 17-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oakes.

Oakes (1,460,349) disclose a method and apparatus for regulating temperature of an incubator. An electric heating coil arranged in an incubator, a controlling switch for the coil and a thermostat for operating a plunger for opening and closing a switch for controlling the temperature of the interior of the incubator (see claims). The reference fails to disclose that the temperature regulating means to heat the incubator above 50° C. or the claimed temperatures.

It would have been obvious at the time applicant invented the claimed apparatus to adjust the thermostat disclosed by Oakes for purpose of limiting the temperature in the desired temperature ranges. Also, thermostats are capable of temperature in the specified temperatures and controlling the temperature of the incubator in specified temperature range is an intended use of the thermostat. Therefore, thermostat disclosed by the Oakes is capable of limit the range of the temperature of the incubator. Further, it is well known in the art to clean a surface with water to remove contaminants from the surface. Therefore, one of ordinary skill in the art would use water before disinfecting the incubator with heating.

#### Allowable Subject Matter

Claim 22 is allowed over the cited prior art.

Claims 13, 15 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Reasons For Allowable Subject Matter

The following is an Examiner's statement of reasons for the indication of allowable subject matter:

None of the prior art discloses or suggests a process of cleaning an incubator during an incubation process by heating the incubator to the temperatures of 58° to 65° 100° C or 150° C for 25 minutes.

Response to the Applicant's Arguments

The applicant argued that there is no disclosure in the Grossman patent relating to a step of disinfection the incubator, let alone using temperature regulator for disinfecting the incubator.

This argument is not persuasive because the claimed process does not restricted a specific temperature and time as disclosed in the specification for disinfecting the incubator. Since the claimed process is claiming heat treatment, which is done in the Grossman patent also. Therefore, Grossman inherently disinfect the incubator as claimed herein.

The applicant argued that disclosure of Oakes patent teaches away from the aspect of applying a heat treatment for purpose of disinfecting, let alone maintaining a temperature above 50° C.

This argument is unpersuasive because Oakes discloses heaters which are capable of heating the incubator in the claimed ranges.

Applicant's arguments filed November 11, 2008 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

*Any inquiry concerning this communication or earlier communications from the examiner should be directed to Saeed T. Chaudhry whose telephone number is (571) 272-1298. The examiner can normally be reached on Monday-Friday from 9:30 A.M. to 4:00 P.M.*

*If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Michael Barr, can be reached on (571)-272-1414. The fax phone number for non-final is (703)-872-9306.*

*When filing a FAX in Gp 1700, please indicate in the Header (upper right) "Official" for papers that are to be entered into the file, and "Unofficial" for draft documents and other communication with the PTO that are for entry into the file of the application. This will expedite processing of your papers.*

*Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (571) 272-1700.*

*Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).*

*Saeed T. Chaudhry  
Patent Examiner*

*/Michael Barr/*

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*Supervisory Patent Examiner, Art Unit 1792*